

FILED
Court of Appeals
Division II
State of Washington
4/26/2022 1:15 PM

No. 56193-0-II

Court of Appeals, Division II
State of Washington

In Re Personal Restraint Petition of:
ROBERT Deshawn GOTT,
Petitioner.

Pierce County Superior Court No. 16-1-00509-0

The Honorable Judge Bryan E. Chusheoff

Petitioners Reply Brief to states Response
to Personal Restraint Petition.

Robert D. GOTT
Petitioner, Pro Se
Stafford Creek Corr. Ctr.
191 Constantine Way
Aberdeen Wa. 98520

Table of Contents

I. Introduction

1.

II. Restatement of the Issues

1.

III. Status of Petitioner and Statement of the Case

2.

IV. Argument

A. Petitioners claim the state knowingly presented
false testimony to the jury resulting in the
Petitioners conviction, Violating Petitioners
Due Process Right.

3.

B. Petitioners Appellate counsels Argument
that the state failed to prove their
Burden of Actus Rea Constituted
Ineffective Assistance.

6.

C. The state Presented Insufficient evidence
to prove beyond a reasonable doubt the
Petitioner had the requisite mental state
to constitute the crime charged. The
State Presented RCW 10.77.060 Material

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Evidence to disprove the Petitioners

Diminished Capacity Defense. — 8.

V. Conclusion — 15.

VI. Oath of petitioner — 16.

Table of Authorities

Strickland v. Washington, 466 U.S. 668 687 104

S.Ct. 2052, 86 L.Ed. 2d 674 (1984) —

10.

Estelle v. Smith, 451 U.S. 454 469-72 (1981) — 10.

United States v. Cronin, 466 U.S. 648 86 L.Ed. 2d

657, 104 S.Ct. 2039 (1984) —

10.

State v. Hutchinson 85 Wn. App. 726 (Wn. CoA 1997) — 12.

RCW 10.77.060 —

11-13.

RCW 10.77.068(1)(A)(B) —

9.

I: Introduction

Petitioner, Robert D. Grott, was convicted of one count of murder in the Second degree and Seven Counts of Assault in the first degree. Petitioner Direct Appeal was improperly argued resulting in all issues raised being denied. Petitioner now Pro Se timely presents multiple issues of Constitutional Magnitude that deprived him either a fair trial or Effective Assistance of Counsel. It will be left in this court's capable hands to determine which issues have merit and decide the best remedy. This is the Petitioner's Reply to the State's response.

II: Restatement of the Issues

A. Petitioner clearly shows the state knowingly presented false testimony through Petra Smith, a witness who was getting high at the time of the alleged crime. Then the state failed to correct Ms. Smith's false testimony.

B. Petitioner's Appellate Counsel argued that the State's burden of proof beyond a reasonable doubt of every essential element includes the Actus Rea in a murder case. Appellate Counsel was ineffective for not researching

1
2 the Essential Elements and providing Knowledgeable
3 Assistance to the Petitioner.
4

5 C. The State Presented RCW 10.77.060 material
6 evidence to the jury to disprove the Petitioners
7 Diminished Capacity Defense. Unfairly denying
8 the defendants Defense.
9

10
11 III. Status of Petitioner and Statement
12 of the case.
13

14 The Status of Petitioner Robert D. Grott and
15 Statement of the case are as stated in Petitioners
16 Original Personal Restraint Petition.
17
18
19
20
21
22
23
24
25
26

IV. Arguments

A. Petitioners Claim the State Knowingly presented false Testimony to the Jury resulting in Petitioners Conviction, Violating The Petitioners Due Process Right.

The Respondents argument does not contend against the Petitioners Allegations and Evidence that Petra Smith was lying on the Stand or that Ms. Smith was high at the time of the alleged crime. The Respondent does not contend or offer argument that the State Knowingly presented Petra Smith as a Material Witness knowing before trial Ms. Smith had multiple versions of the alleged crime. The Respondent does not contend that after Ms. Smith false testimony on the stand the state failed to correct her lies.

The Respondents only argument is that the petitioner raised this claim on Direct Appeal in his Statement of Additional Grounds (SAG).

This Argument fails the respondent because the issue was improperly raised before this court and never ruled on. This court stated "Because Grotts argument is not properly before us and is more appropriately raised in a Personal

1
2 Restraint Petition. State v. Grott CoA unpublished opinion
3 No. 50415-4-II pg 41. Petitioner Properly comes before
4 ~~now~~ this court raising this argument in his Personal
5 Restraint Petition.
6

7
8 The Petitioner contends that if Justice is to be served,
9 this issue must be scrutinized, and if found to be
10 factual and true, that the State did knowingly present
11 false testimony or fail to correct false testimony
12 after hearing it, violating the Petitioner's Constitutional
13 Right to a fair trial, Then Justice can only be
14 served by reversing the Petitioner's conviction.
15

16 Without question the state prosecutors had access
17 to all the Discovery Material pertaining to Petra Smith's
18 multiple witness statements and Inconsistencies
19 there in. The State thus knew or should have known
20 that its witness could impeach herself with varying
21 accounts of the alleged crime. The State should have
22 known that she (Ms. Smith) was getting high moments
23 before the shooting in the parking lot. Due to Ms. Smith
24 using drugs (a mind altering chemical) she should not
25
26

1
2 have been called to testify. The state still chose
3 to present Ms. Smith as its material witness, as if
4 her testimony were the truth of the matter. Ms. Smith
5 contradicts herself on multiple occasions during
6 her testimony and admits to smoking Marijuana
7 prior to the alleged crime.
8

9
10 The state prosecutor states on the record
11 "I agree there is a change in this detail about
12 seeing the shooter pacing down the sidewalk before
13 the shooting." RP 814-15. This Establishes the states
14 acknowledgment of Ms. Smith's lie. The state continues
15 "I agree that this is a significant detail that only came
16 out in a defense interview of her." RP pg 814-15. This
17 Establishes the state knew Ms. Smith had varying
18 accounts with significant changes prior to calling
19 her on the stand to testify. The Prosecutor continues
20 "That is the extent of what the court has heard from her."
21 RP pg 814-15. This Establishes the states acknowledgment
22 of Ms. Smith's False testimony being presented as material
23 Evidence to the court and Jury. The prosecutors dialog-
24 took place outside of the Jurors Presence.
25
26

1
2 For these reasons the Petitioner request this court
3 in the intrest of justice reverse his conviction and
4 remand for further proceedings.

5
6 B. Petitioners Appellate Counsels Argument that
7 the State failed to meet its burden to prove
8 the Actus Rea Constituted Ineffective Assistance.
9

10
11 Petitioners counsel was ineffective under Strickland
12 v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052 80 L.Ed.
13 2d 674 (1984). Petitioners argument in his Personal
14 Restraint Petition was vague yet powerful res
15 Ipsa loquitur. Petitioner wishes to elaborate on
16 the prejudice sustained by counsels failure to
17 argue Mens Rea instead of the Actus Rea.
18

19 Counsels failure to research and provide knowledgeable
20 assistance as to the issue at hand renders her
21 performance insufficient and under an objective standard
22 or reasonableness. Counsel Asserting the states burden
23 as the Actus Rea in a murder case the incorrectly
24 corralating and citing, State v. Eaton, 168 Wn. 2d
25
26

1
2 476 229 P.3d 209 (2010) as the authority stating so,
3 clearly establishes this.
4

5 The Prejudice that occurred from counsels unresearched
6 and unknowledgable Argument is Petitioner was deprived
7 of the favorable standard of review provided under the
8 Direct appeal standards. Also Had Counsel Correctly argued
9 the states burden of proof as the Mens Rea in a Murder
10 Case, a Case in which the defendant Ascertained Self defense
11 and an Expert supported Diminished Capacity (PTSD) Defense,
12 The State would have shouldered a heavy burden of
13 proving beyond a reasonable doubt 1.) The State at
14 trial disproved the defendants self defense beyond a
15 reasonable doubt. 2.) The defendant Intentionally committed
16 Murder beyond a reasonable doubt. 3.) The defendants mental
17 state was not impaired by PTSD at the time of the
18 alleged crime, beyond a Reasonable doubt.
19
20

21 Had Counsel argued the state failed to meet it burden
22 of disproof regarding the Mens Rea and the defendants
23 Diminished Capacity then Introduced as supporting documentation
24 Exhibit 195 the states RCW 10.77.060 Competency
25
26

1
2 and Insanity examination the outcome of the petitioners
3 Direct Appeal would have been different.
4

5 For these reasons the Petitioner request this court
6 find his Appellate Counsel's insufficient argument
7 violated his 6th Amendment Right to Effective
8 Assistance of Counsel. Then Reverse his conviction
9 and remand for further proceedings.
10
11

12 C. The state did present insufficient evidence
13 to prove beyond a Reasonable Doubt, the
14 Petitioner had the requisite mental state
15 to constitute the crime charged. The state
16 did present RCW 10.77.060 (competency
17 and Insanity) evidence and testimony to
18 disprove the Petitioner's Diminished
19 Capacity Defense.
20

21 The Respondent in this petition seems to be confused
22 by or completely neglected by choice the issue at hand.
23 The petitioner never alleged anything about the
24 court's order to send him to Western State
25
26

Hospital (WSH) for a mental health examination. To the contrary the Petitioner argues the order on its face is correct. The violation lay in the execution, Statutory Authority, and procedures that followed the order.

The Courts Order states "The defendant shall be committed to Western State Hospital for a period of up to fifteen days from the date of admission to Western State Hospital. The defendant is to be transported and admitted to Western State Hospital. No later than Seven (7) days from the date of this order." The date of the order is October 24, 2016.

By statute RCW 10.77.068 (1)(A)(B) the state has a "performance target date" of 7-14 days. The defendant was not transported and admitted to WSH until December 1, 2016. thirty-seven (37) days after the date of the order. This breach of contract signed by all parties should void the contract/order and any

evidence or information obtained by its use should be dismissed as fruit of a poisonous tree.

The state used this court order to transport and admitt the defendant into WSH without renewing or requesting permission of an upelated valid court order, thus not notifying the court and Defense Counsel of the time, place, and procedure of the mental health examination. Essentially the State used the court order to Interrogate the defendant at WSH without defense counsels presence. This act created a violation of the defendants 6th Amendment. Right to Effective Assistance of Counsel under both Estelle v. Smith, 451 U.S 454, 469-72 (1981) and United States v. Cronic, 466 U.S 648 80 L.Ed 2d 657, 104 S.Ct 2039 (1984).

In Cronic the court stated "The presumption that counsels assistance is essential requires us to conclude that a trial is unfair if the accused is denied counsel at a critical stage of his trial."

[Footnote 25: "The court has uniformly found

1
2 Constitutional error without any showing of prejudice,
3 when counsel was either totally absent or prevented
4 from assisting the accused during a "critical stage"
5 of the proceeding."] Id.
6

7
8 The Statutory Authority (RCW 10.77.060), and
9 the procedures of the evidence and testimony
10 presented at trial, the petitioner contends were
11 insufficient, unfair, and relieved the state of its
12 burden to prove beyond a reasonable doubt the defendant
13 had the mental state needed to constitute the crime
14 charged. Not as the Respondent argues the court's
15 order.
16

17 Exhibit 195 (see Attachment A) is the Forensic
18 mental health evaluation, conducted by Dr. Ray Hend-
19 rickson and WSH supporting staff. It is a
20 RCW 10.77.060 Competency and Insanity assessment. RCW
21 10.77 statutes govern competency and insanity
22 defenses and various issues. RCW 10.77 statutes
23 do not apply to cases where the defendant
24 asserts a diminished capacity defense.
25
26

1
2 See State v. Hutchinson, 85 Wn. App. 726 (1997)

3 In Hutchinson the defendant tried to use

4 RCW 10.77 statutes to support his argument of
5 Statutory privilege against self-incrimination,
6 but had asserted a Diminished Capacity defense.

7 The court held "We find no merit in his argument.

8 The statute upon which he relies addresses insanity
9 and competency. It does not apply to cases involving
10 diminished capacity." Id.

11
12
13 In the instant case the Petitioner/Defendant
14 asserted a diminished capacity defense. Thus the
15 states use of a RCW 10.77.060 Competency
16 and Insanity evaluation/Assessment to disprove
17 the defendants defense is improper, meritless
18 and contrary to this court and the Supreme
19 Courts decision in Hutchinson.

20
21 Exhibit 195, Dr. Hendricksons Forensic Mental
22 Health Evaluation States in bold font, in the
23 first sentence of the first page" The forensic
24 evaluation reflected in this report was conducted
25
26

1
2 pursuant to Court order under Authority of
3 RCW 10.77.060."
4

5 The Second Paragraph states "additionally as is
6 mandated by RCW. 10.77.060 we will address
7 any further need for evaluations under RCW 71.05
8 and present an opinion regarding Mr. Grotts
9 Risk for future dangerousness." This means
10 Competency and Insanity statutes were used as a
11 gateway to introduce an opinion regarding the
12 defendants risk for future dangerousness. This was
13 unfairly admitted into trial and presented as
14 evidence to the jury for deliberation, which
15 was prejudicial towards the defendant.
16
17

18 The first sentence on the Second page
19 states "Pursuant to RCW 10.77.060 Dr. Ray
20 Hendrickson WSH Psychologist was designated as
21 the qualified expert or professional person to
22 examine and report on the mental condition of
23 Mr. Grott." This means pursuant to competency
24 and Insanity Dr. Hendrickson was designated to
25
26

1
2 examine and report on the defendants mental condition
3 ergo, is he insane or competent to stand trial.
4

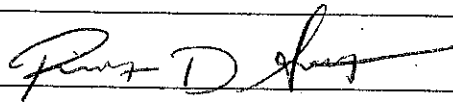
5 The failure to offer argument to these
6 facts from the Respondant should show
7 this court that the Respondant concedes this
8 issue. The states use of RCW 10.77 statutes
9 as a gateway to introduce evidence and testimony
10 in order to disprove the defendants diminished
11 capacity defense was unfair and contrary to
12 established law, and did deny the defendant
13 his right to a fair trial. This was actually
14 and substantually prejudicial to the petitioner.
15
16

17 The Petitioner request this court stand by its
18 decision in Hutchinson and find the states evidence
19 and testimony from Dr. Hendrickson and WSH supporting
20 staff merit-less. Subsequently the states evidence
21 used to disprove the defenelants diminished capacity
22 insufficient, and in the intrest of Justice dismiss
23 the Petitioners convictions with prejudice.
24
25
26

V. Conclusion

For the aforementioned reasons laid out here and in Petitioner, Original Personal Restraint Petition, The Petitioner Prays this Court accept his claims and reverse his convictions or dismiss his convictions with prejudice.

Respectfully submitted this 26th day of April 2022.

x 

Robert D. Grott, pro se
Petitioner

191 Constantine Way
Aberdeen, Wa 98520

VI. Oath of Petitioner

State of Washington

County of Grays Harbor

After being duly sworn on oath, I depose and state: That I am the petitioner, that I have read the petition, know its contents, and attest that it and any attachments are true and accurate.

April 25 2022

Date

x 

Robert D. Grott # 399611

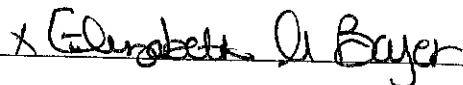
Petitioner Pro Se

191 Constantine Way

Aberdeen WA 98520

Subscribed and Sworn to before me this
25 day of April 2022.



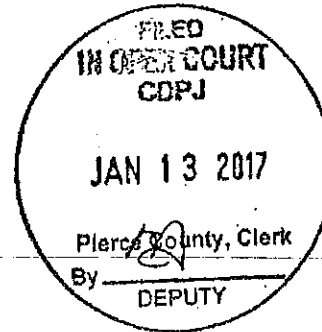
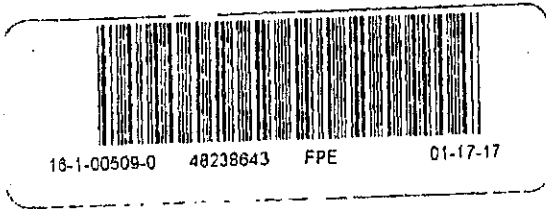
x 

Notary Public in and for the State
of Washington residing at Aberdeen
my commission expires: 3/30/2023

ATTACHMENT (A)

ATTACHMENT (A)

0094



15475

1/17/2017

IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff

vs.

GROTT, ROBERT DESHAWN,

Defendant

Cause No. 16-1-00509-0

FORENSIC MENTAL HEALTH EVALUATION

0095

CENTER FOR FORENSIC SERVICES
Fax Transmittal Cover Sheet

CONFIDENTIALITY NOTICE: This facsimile transmission (and/or the documents accompanying it) may contain confidential information belonging to the sender, which is protected by disclosure laws. The information is not the intended recipient; you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone to arrange for the return of the documents.

DATE: 1/11/2017

TO: Criminal Presiding Judge, FAX: (253) 798-7448
Pierce County Superior Court

Nate Hinrichs, DMHP FAX: (253) 301-5209

Judy Snow, Jail FAX: (253) 798-6635

FROM: Lauriel for Dr. Ray Hendrickson, J.D. Ph.D.

PHONE: (253) 756-2761

Re: Robert Deshawn Grott

Cause No.: 16-1-00509-0

TOTAL NUMBER OF PAGES, INCLUDING THIS COVER SHEET: 25

If there is any difficulty receiving this transmittal, please contact the person sending the transmittal at the number provided above.

1/17/2017 15475



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

WESTERN STATE HOSPITAL
W27-19 * 9601 Steilacoom Blvd. S.W. * Tacoma WA 98498-7213 * (253) 582-8900

January 10, 2017

Forensic Mental Health Report

RE: State of Washington
vs
Robert Deshawn Grott

CAUSE: 16-1-00509-0
WSH: 442661
DOB: March 22, 1986

The forensic evaluation reflected in this report was conducted pursuant to court order under the authority of RCW 10.77.060. This report is to be released only to the court, its officers and to others designated in statute, and is intended for their use only. Any other use or distribution of this document is not authorized by the undersigned.

Referral Information

On October 24, 2016, the Pierce County Superior Court ordered that Mr. Grott be admitted to Western State Hospital (WSH) for up to 15 days for an examination regarding his mental state at the time of the alleged offenses of which he is charged, specifically regarding diminished capacity. Additionally, as is mandated by RCW 10.77.060, we will address any further need for evaluations under RCW 71.05, and present an opinion regarding Mr. Grott's risk for future dangerousness. This report reflects the findings.

Mr. Grott is charged with one count of Murder First Degree, alleged to have occurred on February 1, 2016.

Sources of Information

Mr. Grott was admitted to WSH on December 1, 2016, and housed on Ward F-1, a ward that allows for 24-hour-per day observation and treatment, where he has been under the care and treatment of Dr. Nitin Kamik, WSH Staff Psychiatrist.

Dr. Katharine McIntyre, WSH Forensic Psychology Postdoctoral Fellow participated in the December 12 interview. Ms. Maiga Berzins, M.A., WSH Psychology Predoctoral Practicum Student, assisted with the records review. Dr. McIntyre and Ms. Berzins drafted significant portions of this report. We completed this report taking into consideration all of the assessments, consultations, and findings.

15475
1/17/2017

Past Medical History: The patient denies any medical or surgical history. He has no known drug allergies.

Social History: The patient was born in Modesto, California. He completed a 12th grade education at Antelope Valley School for adults. He has never married and has no children. He was in the Marine Corps for four years and says he received an honorable discharge. He is currently homeless and was living in his brother's house. He receives income from the Veteran's Administration.

Family Psychiatric and Medical History: None known.

Mental Status Examination: This is an African-American male who is well-built, well-nourished, and neat and well-groomed in appearance. His attitude is cooperative. Behavior is not unusual. Affect is well-modulated. Mood is euthymic. Thought process is logical. Speech production, rate, and articulation are normal. Thought content is appropriate. He denies being a danger to self or others. There are no delusions or hallucinations elicited. Cognition: He is awake, alert, and oriented to person, place, date, and situation. Memory: Registration is intact. Short-term and long-term memory is also intact for recounting the history of his illness. An estimate of his intellectual functioning is average per word use and vocabulary. Attention and concentration are intact per abstract reasoning during the interview. Insight and judgement are good.

Diagnostic Summary: Robert Grott presents as calm, euthymic, and not psychotic.

Strengths/Assets: The patient is verbal.

Additional Clinical History Presented December 12

We interviewed Mr. Grott on December 12, 2016, regarding his relevant clinical history. Dr. McIntyre participated in the interview. Dr. Manley was present for the interview.

Mr. Grott presented as a 30-year-old Black/African-American male of average build, well-groomed, neatly attired in hospital attire, and with apparent good hygiene. He was alert, attentive, and cooperative throughout the interview.

He reported that he was born in Modesto, California and raised by his biological parents, who "were in the service...been traveling my whole life." He stated that his parents divorced when he was 15 years of age, but noted that following their separation, he spent time with both his mother and father. He reported having one younger brother, one younger maternal half-brother, and one younger paternal half-brother. He indicated that he was in current contact with all of his

0097
15475
1/17/2017

Forensic Mental Health Report
Re: Robert Deshawn Grott

January 10, 2017
Page 2 of 24 pages

Pursuant to RCW 10.77.060, Dr. Ray Hendrickson, WSH staff psychologist, was designated as the qualified expert or professional person to examine and report upon the mental condition of Mr. Grott.

In addition to reviewing these records, we reviewed and considered the following information in the preparation of this report:

- Multidisciplinary Intake Assessment on December 1, 2016
- Forensic evaluation interview on December 12, 2016
- Forensic evaluation report by Dr. James Manley, defense-appointed expert, evaluation date, September 9, 2016
- Records of evaluation and treatment at WSH
- Pierce County Jail mental health records
- *Washington State Patrol WATCH* report
- *National Crime Information Center (NCIC)* database information
- Discovery material

Notification and Agreement to Participate

Prior to the December 12 interview, we informed Mr. Grott of the non-confidential nature of the evaluation, the purpose of the evaluation, and parties who would receive a copy of the forensic report. We also advised him that he could have his attorney present for the evaluation, he could decline to answer questions and could terminate the interview at any time, but he would likely be subject to potential consequences regarding his expert's testimony. We told him of the possibility that the report could include a recommendation for mental health treatment, and the fact that our role is that of neutral evaluators, and not as treatment providers for him.

Mr. Grott indicated he understood this notification and agreed to the interview. Defense-appointed psychologist, Dr. James Manley, was present for the December 12 interview.

Relevant Clinical History and Intake Mental Status

We have set out below a summary of Dr. Karnik's December 1 intake interview and assessment, with information regarding Mr. Grott's relevant clinical history and intake mental status. We have added additional clinical history below.

History of Present Illness: The patient denies any mental health issues. He is not taking any psychiatric medications and denies any current symptoms of mood, anxiety, or memory. He reports normal sleep and appetite.

Past Psychiatric History: The patient denies any past psychiatric history. The patient states he has occasionally used marijuana and alcohol. He denies past suicide attempts.

siblings, as well as his parents. He denied any childhood history of abuse or neglect, but noted that his parents physically disciplined him, "Just average whoopins when I was a kid."

He denied ever receiving special education classes while in school, but reported that he "dropped out [of high school] as a senior" because "I didn't feel like I was on target...I had difficulty showing up." He noted that he went back to school a couple years later, at which time he earned his high school diploma. He noted that he also attended Santa Monica Community College for "one quarter...wanted to major in business [and] foreign language..." He indicated that he left college because his "little cousin was murdered. After he passed, I moved up [to Washington] ...get away from the lifestyle...not my [life]style...the area...[had a lot of gang] violence."

He reported that after dropping out of high school he "worked for my stepdad's company truck driving," noting that he ultimately left this job in order to finish school so he could join the military. He stated that he served in the Marine Corps from January 9, 2009 until February 21, 2012 as a "Corporal, Supply Admin." He reported that during his service, he deployed to Afghanistan. He indicated that during this tour, he did not personally experience any direct combat. He stated that following his honorable discharge from the Marines, he was self-employed, growing and selling marijuana in Washington State. He also noted that for a time, he also worked in a cannabis dispensary.

He reported that he has "chronic pain" in his "neck, back, knees...it'll stiffen'....I got money from the government...[Veteran physical] disability...we trained hard." He denied experiencing any other medical conditions.

He noted that his current alcohol use is "rare," but indicated that he "used a lot of it in the military...when I got out I'd drink occasionally. I'm more into smoking." He reported that he began smoking marijuana in the "7th [or] 8th grade and noted that his marijuana use "increased over time." He stated that he continued to use marijuana while he was in the Marine Corps, and noted that he had a "special court-martial" due to his marijuana use. He stated that following his Marine Corp enlistment, he used marijuana "daily...quarter ounce." He denied using any other illicit substances.

He denied past inpatient mental health treatment. He reported that he went to the Veterans Administration (VA) in Los Angeles "once" to inquire about a mental health disability evaluation for Posttraumatic Stress Disorder (PTSD), because "my best friend was blown up. Multiple IED explosions outside our base." He noted that he "never followed up" with the VA following the death of his cousin. When asked if he currently believed he has PTSD, he stated, "No," adding that the only mental health symptom he currently experiences is "just hypervigilance...I'm just very vigilant what's going on...I just don't like people behind me."

Collateral Information--Criminal Conviction History

According to the *Washington State Patrol WATCH* report and the *National Crime Information Center (NCIC)* database information, Mr. Grott has no record of criminal convictions and/or adverse findings.

Records from Pierce County Jail

We reviewed records received from NaphCare, the medical and mental health provider for the Pierce County Jail (PCJ). Records indicate that his only mental health contacts were upon his booking into the Pierce County Jail on February 26, 2016 and his rebooking into jail following his WSH hospitalization on December 16, 2016. On both dates, records indicate that he presented as "stable" and with no evident mental health symptoms. Records indicated at the time of these interactions, Mr. Grott denied having any problems with his appetite or sleep.

Course of Hospitalization

Mr. Grott was admitted to WSH on December 1, 2016. He was not prescribed any psychotropic medications during this hospitalization period, as none was deemed necessary.

For the majority of this hospitalization period, Mr. Grott was reported as being "pleasant and cooperative," interacting appropriately with staff and other patients, and following ward rules (Progress record, 12/2/16). Staff reported that he did not demonstrate any signs of psychosis. He denied suicidal or homicidal ideation, was able to articulate his needs, and maintained goal-directed conversations (Progress records, 12/3/16, 12/5/16, 12/8/16). His social worker noted that despite having an affect that "was flat and somewhat depressed," he reported that he was "okay" and denied having "a Mental Illness" (Progress record, 12/8/16).

It was reported that on December 10, Mr. Grott was in a physical altercation with another patient. Records indicated that after the incident, Mr. Grott appeared calm and refused to discuss the circumstances surrounding the fight with staff (Progress record, 12/10/16).

Current Mental Status Assessment

We assessed Mr. Grott on December 12 regarding his current mental status. Dr. McIntyre participated in the interview. Dr. Manley was present for the interview.

Mr. Grott presented as alert, attentive, and cooperative. He had normal eye contact. He did not appear to have any difficulties with fine or gross motor movement. He appeared to put forth full effort during the interview.

Forensic Mental Health Report
Re: Robert Deshawn Grott

January 10, 2017
Page 6 of 24 pages

When asked about his mood, Mr. Grott stated, "Alright." His affect was congruent to his reported mood. He reported adequate levels of sleep and average levels of energy. He noted that since his incarceration, he had been "hungry," but reported no significant changes in his appetite.

Based upon his education, history, and use of language, we estimate his level of intelligence to be average. His speech characteristics were within normal limits. His thought process was goal-directed and linear.

He denied thoughts of suicide or harm to self or others, but indicated having previous suicidal ideation, "When I was in county [jail]...[because of] this situation." When asked if he ever felt like people were following him, he stated, "The deceased was after me...now his family is after me. Posting it on Facebook. Calling my friends or family." He denied experiencing any other experiences of paranoia, delusional ideations, ideas of reference, magical thinking, hallucinations, and thought intrusions. There were no indications during the December 12 interview that he was experiencing any auditory hallucinations, visual hallucinations, or delusional beliefs. His associations were logical and coherent.

He was oriented to person, place, and time. He had some limitation to his understanding of the purpose of the evaluation, but he seemed to understand the provided explanation. He did not appear to have any difficulty remaining focused or attentive. His short-term and long-term memory abilities were within normal limits. His ability to interpret concepts was average. His formal judgment was fair. His insight appeared to be good, as evidenced by his statement, "My ability to function is fine...a bit of anxiety, but I guess that's normal for someone in my situation...always ready to go."

Diagnostic Impressions

Mr. Grott reported that prior to his current case, he had a limited history of past contact with mental health professionals, indicating that he had only completed a small portion of a PTSD disability evaluation at the Veterans Administration. He noted that he had requested this evaluation due to having had traumatic experiences while he was deployed.

During the evaluation interview of December 12, he reported experiencing past symptoms of hypervigilance. Collateral records also suggest that prior to the alleged offense, he was isolative, depressed, and avoided discussing traumatic triggers.

We note that prior to the alleged October 31, 2015 shooting, it does not appear that any of the aforementioned symptoms that Mr. Grott was potentially experiencing were severe enough to be significantly affecting his daily functioning. For instance, he attended school. He paid his bills. He maintained employment, running his own growing business and a store. Therefore, while it is likely that he had some difficulty adjusting to civilian life

Forensic Mental Health Report

Re: Robert Deshawn Grott

January 10, 2017

Page 7 of 24 pages

following his discharge from the military, the psychological symptoms he did experience were not expansive or impairing enough to reach the diagnostic threshold of Posttraumatic Stress Disorder. As such, these symptoms seem best explained by an Adjustment Disorder.

Following the alleged October 31, 2015 shooting, Mr. Grott reported experiencing a significant increase in his vigilant-type behaviors. Specifically, he noted that after this shooting, he began sweeping the house, was fearful that someone would hurt a member of his household, and began carrying a weapon around with him for protection. At that time, it does appear that his behavior changed, and that these changes significantly altered his daily life.

However, while these behavioral changes in themselves could signify the development of a traumatic disorder, they are also suggestive of pragmatic lifestyle adjustments that are adopted to ensure self-preservation. For instance, it is reasonable to assume that an individual might become more vigilant and begin carrying a weapon in order to protect himself against someone who repeatedly threatened him and made a previous lethal attempt at his life.

Individuals who have Posttraumatic Stress Disorder do not have their hypervigilance – or any other psychological symptoms – rapidly abate when a traumatic experience ends. Psychological symptoms for individuals with PTSD, by definition, continue on for at least six months after the termination of the traumatic event.

In this case, there is minimal evidence to suggest that he has had any signs of mental illness since his incarceration. Jail and hospital records provide no indications that Mr. Grott has experienced any trauma-related psychological symptoms over the past 10 months. This was corroborated by his own self-report, wherein he only indicated experiencing anxiety since his arrest.

Psychological symptoms – such as hypervigilance and anxiety – do quickly subside when they are caused by an Adjustment Disorder or are part of a normative response to a traumatic event. As such, it seems most likely that either of the aforementioned was had caused the behavioral changes in Mr. Grott in late 2015 and early 2016.

During our evaluation, Mr. Grott also reported heavy past use of marijuana. He also indicated that he was disciplined by the military for his marijuana use. As such, a Cannabis Use Disorder diagnosis appears warranted.

Forensic Mental Health Report
Re: Robert Deshawn Grott

January 10, 2017

Page 8 of 24 pages

Based upon the information referred to above, a review of medical records and other available material, and the reported clinical observations of staff, we offer the following diagnostic impressions (which are presented in a format that is consistent with *DSM-5*¹):

- Adjustment Disorder, *provisional*,² with self-reported symptoms of mild anxiety
- Cannabis Use Disorder, in remission in a controlled environment

Prosecutor's Allegations

In the Certification of Probable Cause supporting the Information, the charging documents filed February 3, 2016, and law enforcement reports of investigation, the prosecution has alleged essentially as follows:

On February 1, 2016, Tacoma Police received multiple calls reporting a shooting at 3601 Center, an AM/PM gas station. Upon arrival, the police found numerous witnesses and a deceased male inside a "bullet-riddled" vehicle. Reportedly, the victim had suffered more than ten gunshot wounds. The victim was identified as Julian Thomas.

Police took statements from multiple witnesses who described the shooting and shooter. The shooter was observed arriving at the bus stop in front of the AM/PM with a skateboard. He left his skateboard at the bus stop and fired approximately 46 rounds from a handgun at the victim's vehicle. Witnesses observed him reloading the gun twice. The AM/PM building was hit with bullets but no other vehicles were shot. One witness took a three second video of the shooting, which clearly shows the shooter's outfit and his back but not his face.

Witnesses then describe the shooter picking up his skateboard and riding west. Two bystanders followed the shooter to 2914 South Madison Street, where the police later attempted to find him using a K9 unit. The shooter was not found, however footprints and the skateboard were discovered.

Video surveillance from a gas station eight blocks from the AM/PM showed a black male wearing the same clothing described by witnesses and carrying a skateboard, walk into the store 15-20 minutes prior to the murder. This video showed an image of the shooter's face.

On February 2, Verna Thomas, the victim's mother informed the police that she could identify the shooter from the photo image provided. She identified Robert Grott. Ms.

¹ The *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)* was released in mid-2013, and replaces the *DSM-IV*. There had been a transition during 2013 to 2015 to the use of *DSM-5* in connection with diagnostic procedures.

² A *provisional diagnosis* refers to a condition, which causes a diagnosis to be presumed, but for which there is insufficient evidence to support the diagnosis, and for which further evidence, investigation, or inquiry is required.

Forensic Mental Health Report
Re: Robert Deshawn Grott

January 10, 2017
Page 9 of 24 pages

Thomas reported that her son had a dispute with Mr. Grott four to five months before the shooting regarding a missing or stolen handgun. Ms. Jada Thomas, the victim's sister further reported that she had heard Mr. Grott and Mr. Thomas threatening each other. Both Jada and Verna Thomas identified Mr. Grott in the video.

A search warrant resulted in the discovery of a Glock 19, 9mm handgun in Mr. Grott's bedroom. Shell casings found at the scene of the murder were consistent with this weapon.

Mr. Grott's mother reported to the police that her son and his brother had fled Washington State. Mr. Grott turned himself in to the Santa Monica (California) Police Department on February 9, 2016.

Videos That Were Taken at the Time of the Events

We have referred to several videos that were reportedly taken by bystanders and had been captured by surveillance cameras of several businesses located near the referenced events. We received some of the requested videos, and they confirm the statements of some of the witnesses and offer no new or different information.

Interview of Mr. Grott Regarding the Incident

We interviewed Mr. Grott on December 12, 2016 in an interview room on Ward F-1 of the hospital, regarding his history of mental illness and treatment and his recollection of the circumstances leading up to and including the events of February 1, 2016 that led to his current charges. Dr. McIntyre participated in the evaluation interview. Dr. Manley was present for the interview. Mr. Grott was open and cooperative, and appeared to present his best efforts in responding to inquiries.

He reported in early 2015, he moved into the "house on 29th" with his brother and cousins. He stated that he spent most of that year "growing pot. In the house and in the shop." He noted that for a time he "worked for a lady... June time frame... she just up and disappeared one day. I took over [the shop] for her [in] South Tacoma... 'til October [when] they put in a city ordinance that they were going to shut the [cannabis] shops down." He indicated after that after his shop closed, he spent his time "growing" marijuana at home and "going to shops [by way of] word of mouth" to sell his product.

He noted that when he was not working, he frequently smoked marijuana, "quarter [ounce] daily." He indicated that because he grew cannabis, he usually did not have to pay for the drug. However, he stated that if he had to pay "retail [it would cost] like 70 bucks."

He stated that during that year, he also spent a lot of time "watching YouTube, Netflix. I had a girlfriend... Natasha Stevens... during this time so I spent time with her... and her son [who was] eight." He noted that he dated Ms. Stevens "on and off for a year," indicating

Forensic Mental Health Report
Re: Robert Deshawn Grott

January 10, 2017
Page 10 of 24 pages

that their relationship ultimately ended because "I have trust issues." However, he reported, "I have always kept in touch with the kid."

He reported that his daily life began to change in the "October time frame. October 31st Halloween night, guy [Julian "Jay" Thomas, the victim] shot the house up...he was shooting at me. [Mr. Thomas] fired a shot [into the house], 5-6 inches above my head....I was [inside the house] at the front door...closing the door."

Mr. Grott reported that prior to October 31, Mr. Thomas had spent large amounts of time in his home. He noted that he first began having difficulties with Mr. Thomas "a few months before" Halloween because Mr. Thomas "stole a gun from the house."

When asked about the alleged Halloween shooting, he stated, "I had come home from the Halloween party. We came home three, four o'clock in the morning. His sister [Ms. Jada Thomas] was there with...my little brother...they stayed home." He indicated that when he entered the house through the back door, he "walked passed her...she gave me the stink eye...a disgusted look...one of those motherfucker looks. I just kinda walked passed." He noted that he then said to her, "If you don't get your fat ass out of my refrigerator! You eat me out of house and home."

He stated that after he spoke to Ms. Thomas, he went "up the stairs...she had to call her brother because pretty soon he was on the phone...loud talking [saying] 'You are here yelling at my sister' and shit...[I] gave [the] phone back to [my cousin] Javante because I was still drunk. 10-15 minutes later...and this girl Monet is at the door. [She asked where] Jada was." Mr. Grott indicated that he told her that he did not know where Ms. Thomas was, but stated he invited Monet to search the house to look for her.

Mr. Grott reported that after Monet searched the house, "She left...Monet walks out [and] I see Jay...under the street lights...we had words...everyone was having stupid little words... [He] told me to go inside... [I told him to] get off my street...my brother takes one or two steps [towards Mr. Thomas and] Julian pulls out a gun... [I] pull him back [and said] 'Let's go in the house.'"

Mr. Grott noted that "me and Jay are still having words," but he went "in the house. Close[d] the door...and pow! He fires the shot right over my head...I just froze a bit...so close to my head I felt...insulation hit my head. [I did not move because I thought it was my] good luck spot...didn't move for a second...I asked them [the people in the house] if they were alright...I apologized for putting their lives in danger. Javante calls Jay...they were best friends...he calls him and asked him if he just shot the house."

He indicated that Mr. Thomas stated during this phone call that he was trying to "air that motherfucker out." Mr. Grott also said that Mr. Thomas asked Javante if he needed to

0105

15475

1/17/2017

"shoot some more holes in it" and to "throw Rob out...bring his house outside...I'll kill his ass-right now...He said he was going to murder me when he was going to see me."

Mr. Grott noted that following the altercation with Mr. Thomas, he "went in the kitchen [and picked up a] cooking knife...went into my room and just waited...I just sat at the house and just waited...a couple day later my gun permit shows up"³...three days after he shot my house the permit showed up...I went and purchased a Glock 19...bought it the same day." He indicated that when he purchased the handgun, he also bought "a box or two" of ammunition, noting, "I go shooting all the time. It came standard with two clips and I purchased another."

He stated that after he purchased the weapon, he visited the "Bull's Eye" gun range "maybe once a week, twice a week." He indicated that this range had targets at "10 yard distance." He also noted that the range was "indoor-just for handguns...they want you to have some type of experience."

He noted that during this time, Mr. Thomas "kept sending these threats...sending them through my family [because] I'm not into the social media." He indicated that while he did not receive any direct threats, his family members relayed to him that Mr. Thomas was "going to kill me."

Mr. Grott reported, "For Christmas I bought myself an AR15...assault rifle...30 odd caliber...three clips." He indicated that he still had possession of the handgun and noted, "I would just sleep with them by my bed." He added, "My little brother purchased [a gun] around Christmas time [because] this dude [Mr. Thomas] was a member of a gang...Hilltop Clips...[and he] and his buddies shot up the house."

He noted that in December and January, "I'd kinda be at the house all the time...I'd just be at the house." He indicated that during this time, he would frequently "sweep the house...when noises are made...wake up and sweep the house...just to make sure nobody sneaked in and [tried to] kill everyone...I was the protector." However, he stated that he never considered moving, indicate that he "couldn't move until crop was done."

He noted, "Then February came and it was time to pay bills...[so I] grabbed my skateboard and Glock...[in order to go] pay [the] electric bill at the Fred Meyers on 11th and Stevens Street." When asked why he was carrying a gun, he stated, "It became normal...I wouldn't move without it...I had a Conceal and Carry permit"⁴...I wouldn't move without it." He also noted that he felt "I better have a gun on me...I'd be pretty foolish to be out without one...I

³ Mr. Grott reported that he had applied for his gun permit prior to the alleged October 31, 2015 shooting.

⁴ He reported that he received this permit approximately 2 to 3 weeks before the charged offense. He indicated that he had applied for a Conceal and Carry permit "just to be safe" because he lived in a "bad neighborhood."

Forensic Mental Health Report
Re: Robert Deshawn Grott

January 10, 2017
Page 12 of 24 pages

wouldn't stand a chance in another gun fight." When asked with whom he might have a gunfight, he reiterated that Mr. Thomas had been threatening him.

He stated that after he went to Fred Meyers, he "went up the hill on Rainier Park [in order to skate]...went to Shell station and grabbed some swishers⁵...went [towards the] 10 Collective," a cannabis shop, because "I hadn't smoked that day...because I didn't have no weed when I woke up." Up until this point, he noted, "it was a good day."

He noted that he then went to the AM-PM. He stated that when he arrived, "Me and Julian locked eyes. He was talking to some girl...I made it to the side walk and still locked eyes...he said something to the girl [and she walked away]...he made a quick dive in the car." He noted that "the motion and the way he moved" made Mr. Grott believe that Mr. Thomas was reaching for a gun. Mr. Grott indicated that after "he dove...and I saw [him come] back out...I fired...46, 47 [shots using my] semi-automatic...I was afraid for my life...I was just trying to survive the day."

Mr. Grott reported, "Initially, he jumped back into the car...I saw his head pop up and go back down...head up and go back down...eventually I didn't see his head go up anymore...I didn't know if he was going to jump up [so I loaded my] third clip... [That is when I] heard the girl screaming, 'It wasn't me. It wasn't me.' Didn't notice her at all...she didn't register at the time." He then elaborated by stating that after he "locked eyes with Jay" he did not focus on anybody but Mr. Thomas, and thus, did not see her move back into the car.

He stated, "My intention was just to keep him pinned down" and indicated that he was not thinking that he could kill Mr. Thomas. He reported that the entire incident lasted "maybe 20 seconds, max...rapid fire."

He noted that when this occurred, he was located about "20 yards away" from the car. When asked why he did not leave the AM-PM when he saw Mr. Thomas, Mr. Grott stated, "I wasn't going to make it passed him...no way out" and added that the store was "a good mile" from his house. He also indicated that he felt confident that Mr. Thomas would shoot at him in the AM-PM parking lot, because he had "shot at [his] head before."

He reported, "After shooting was done, I grabbed my skateboard and went home." He added that as he was traveling home, he was "being followed...didn't know it at the time... [but when he realized it he] ran back into my neighbor's yard" so that he could enter his house without being seen.

⁵ Swisher is an inexpensive brand of cigars. Marijuana cigars (blunts) can be made by separating the rolling paper of a tobacco cigar, and then using the paper to roll the marijuana.

He indicated that after he returned home, "I just laid on the floor...I still had swishers [but no marijuana, so] I went into my brother's room...he had roaches⁶...I turned on Empire... had some Hennessy...drank and smoked."

He stated that his "brother came home an hour or so later...word got passed around pretty quick...everyone assumes I'm the guy who shot him [because of the alleged October 31 shooting]...he asked me what's going on and I told him I don't know."

He reported that later that day, he and his brother went to a family member's house. He stated that at his family member's house "the decision was made [that] me and my brother should leave town because" they had received word that Mr. Thomas's friends were planning on retaliating "that night."

Mr. Grott noted that he and his brother immediately began traveling down to California and separated in the Los Angeles area. He reported that he checked into a hotel and "just hung out there a couple days...[then] I turned myself in [to the] Santa Monica Police Department." He indicated that he did not bring his weapons to California, instead leaving his guns "in a bag in my house."

Collateral Interviews

We reviewed the written record of the witness statements provided in the discovery materials. We have included below a summary of the interviews that describe Mr. Grott's behaviors, appearance, and interpersonal interactions during and around the time of the alleged offense.

Police Interview of Ms. Jessica Stewart

Ms. Jessica Stewart stated during a police interview on February 1, 2016 that she stopped for traffic in her car at Center St and Union Ave. She noted that she heard several gunshots towards her left. Ms. Stewart stated she looked over and "saw the suspect on the west side of the entrance into the AM-PM lot firing shots from a black handgun." She indicated she observed the shooter walking towards the building while he continued to fire shots. She reported that she saw the shooter stop 15 feet away from the car he was shooting at, after which he fled west on a small yellow skateboard.

Police Interview of Ms. Tiffany Condon

Ms. Tiffany Condon stated during a police interview on February 1, 2016 that she was stopped at a traffic light on Center and Union when she heard gunshots at approximately 12:44. Ms.

⁶ A roach refers to the end of a blunt or marijuana cigarette (joint). It largely consists of resin, and can be rolled into a new blunt or joint.

Forensic Mental Health Report
Re: Robert Deshawn Grott

January 10, 2017

Page 14 of 24 pages

Condon reported seeing a black male "shooting nonchalantly into a gray Impala." Ms. Condon described seeing the "shooter turn around but then decided to shoot more, around 5 to 7 shots more."

Police Interview of Ms. Dawn Meeds

Ms. Dawn Meeds stated during a police interview on February 1, 2016, that she was sitting in a vehicle at Center and Union when she heard four gunshots. She noted that she saw a black male "shooting into a silver car that was parked in the AM-PM lot." She indicated that she did not see the shooter reload, but reported seeing him "flee" northwest behind the AM-PM.

During a second police interview, Ms. Meeds stated that the shooter "turned away from the silver car briefly, and then fired two more shots into the car." She also stated that after the incident, the shooter "calmly walked west."

Police Interview of Ms. Petra Smith

Police interviewed Ms. Petra Smith on February 1, 2016. She was reportedly "hysterical" during her initial interview at the AM-PM and was "screaming and crying." She was reported as repeating the statements "he was my friend" and "I don't want to be involved," before agreeing to speak to police. She recalled walking up to the vehicle and speaking to the victim, "Jay," through the car window when she heard gunshots. Ms. Smith stated that the car window shattered and she jumped into the driver's seat. She indicated she heard "Jay" scream at her to run, after which she heard more gunshots hitting the car. She noted she ducked down, crawled out of the vehicle, moved underneath another parked vehicle, and hid until the shooting stopped.

Police Interview of Mr. Donald Pettie

Mr. Donald Pettie reported during a police interview on February 1, 2016 that he observed the shooter walking east on Center Street when he began shooting towards the store. He reported that the shooter continued shooting while he ran south towards the street. Mr. Pettie initially stated that the shooter reloaded three times during the incident. In a second interview later at the police station, he reported that he "did not believe the male reloaded." He further reported seeing a black female exit the driver's side of the vehicle at which the shooter was firing.

Mr. Pettie described the shooter's behavior during the incident as, "I never saw him run. I never saw him yell. I didn't see him do anything. Um, hurried. Looked like he had a purpose towards whatever he was shooting at...Not rushing at all. He seemed calm to me...Very calm."

Police Interview of Ms. Betty Jackson

Ms. Betty Jackson reported during a police interview on February 1, 2016 that she recalled standing by her residence, where she observed a black male walking north bound. She reported

0109

15475

1/17/2017

that he "appeared suspicious," threw an object over the fence and stuffed another object into the front waistband of his pants, and walked away westbound. She directed the police officer to the location, and pointed to a skateboard on the ground on the other side of the fence. In a later interview, Ms. Jackson reportedly stated that she observed the shooter "pull a black pistol from his waistband, press check it and put it back into his waistband."

Police Interview of Mr. William Miller

Mr. William Miller reported during a police interview on February 1, 2016 that at approximately 12:45 pm, he and a friend were sitting in a vehicle facing northbound. Mr. Miller stated that he then saw the shooter fire dozens of shots at a silver vehicle, adding that during the incident, the shooter walked closer to the rear of the vehicle "in an apparent effort to get a better view into the interior of the vehicle." Mr. Miller added,

I watched him unload that clip and all into the driver's side and the back window. And then he...turned, blew up, got really mad again, loaded it back up again and went for the car again. He fired into the back of the car, went to the other side and went to the other side. That's what led me to believe there was more than one person in the car.

Mr. Miller stated that in reaction to the shooting, he left his vehicle and drew his permitted weapon. He noted that his friend, Mr. Soros, told him, "Don't do that, you know, he'll shoot you. He's crazy." Mr. Miller then noted that he observed the shooter "walk away west from the scene in an apparent calm manner...he walked like nothing had went on. He didn't care."

Mr. Miller noted that Mr. Soros followed the shooter on foot, while he followed the shooter in his vehicle. He indicated that after following the shooter for a number of blocks, the shooter briefly disappeared from view. He reported that when the shooter reappeared, he "did not seem to have as much stuff with him." Mr. Miller reported that he then pointed his gun at the shooter and stated,

[D]ude, stop, you know, I got you. We're following you dude, you're not getting away. You know, and he told us back off. And he turned towards us and started chasing us with his hands like this like he was gonna catch us.

Mr. Miller recalled that the shooter then pointed his arms "at them in a threatening manner as if it concealed the handgun." He recalled the shooter saying, "You guys better back off!" Mr. Miller indicated that he and Mr. Soros then ran back to the car, noting that he pulled his gun out, "cocking it and all making sure I was ready. And I was pointing it out the window." He reported that at this time, the shooter turned and walked away from them.

At the end of one of Mr. Miller's interviews, he made the following statement regarding the shooter's behavior during the shooting:

Forensic Mental Health Report
Re: Robert Dashawn Grott

January 10, 2017
Page 16 of 24 pages

It was like he was sitting there doing this pow-pow-pow and then he walked back and forth, you know, how you just get frustrated and he just grabbed his hands like this and he just looked like he was really frustrated. And he put that clip in like he was really mad and walked up to that car and just unloaded, unloaded again.

He further stated that during the incident, the shooter "was in a rage." However, Mr. Miller indicated that afterward, the shooter's demeanor "...was really casual. He wasn't like in no hurry dude..."

Police Interview of Mr. Brian Soros

Police also interviewed Mr. Brian Soros on February 1, 2016. His description of the shooting, as provided in the police report, was similar to Mr. Miller's description. However, he added that when the shooter confronted him and Mr. Miller, the shooter stated, "You guys need to go; Now!" He further indicated that he had seen the shooter "rummaging" in the garage of the property he entered on 30th Street.

Police Interview of Mr. Ryan Powell

During a police interview of Mr. Ryan Powell on February 1, 2016, he reported hearing gunshots while working at the Caliber Real Estate office on Center Street. He estimated hearing approximately 30 shots. He recalled seeing a black male jump the adjoining 4' wall and jog through the real estate parking lot. Mr. Powell indicated that he asked the male if he knew what was happening. He reported that the male did not verbally respond, but instead ran north on Adams Street.

Police Interview of Mr. Vitaliy Zaychenko

During the police interview of Mr. Vitaliy Zaychenko on February 1, 2016, he reported seeing the shooting from the Little Europe Café across from the AM-PM. He noted that he heard the initial 6-8 gunshots from inside the café before looking outside and seeing the shooter reload a handgun. Following the shooting, Mr. Zaychenko stated that the shooter grabbed a skateboard and walked west on Center Street.

Police Interview of Mr. Scott Lanning

During a police interview on February 1, 2016, Mr. Scott Lanning stated he was pumping gas when he heard gunshots and saw a black male shooting toward the AM-PM. Mr. Lanning indicated that he saw the shooter reload his gun, yell something, and heard a girl screaming.

Forensic Mental Health Report
Re: Robert-Deshawn Grott

January 10, 2017
Page 17 of 24 pages

Police Interview of Ms. Diana Aroutionova

During the February 1, 2016 police interview of Ms. Diana Aroutionova, she described sitting in her vehicle when she saw a black male shooting at the AM-PM. She indicated she heard the shooter "mumble a name." Ms. Aroutionova then reported seeing a female at the scene scream "something about someone who shouldn't have been at the house." Following this, she observed the shooter leave on a skateboard.

Police Interview of Mr. Wayne Howard

During the February 1, 2016 police interview of Mr. Wayne Howard, he reported that while pumping gas he saw a black male ride into the parking lot of the AM-PM on a skateboard. He reportedly witnessed the man "pull out a gun from behind his back with his right hand." Mr. Howard stated he heard the shooter say, "you fucking bitch," before he began shooting the vehicle.

Mr. Howard noted he observed two women run away from the car. He stated that one of the women changed directions and the shooter fired "3-4 rounds in her direction." Mr. Howard reported he then observed the shooter walking "right up to the vehicle and fired about 10 more shots. He calmly tucked the gun into his pants, grabbed his skateboard and walked out of the lot..." The report further indicates that Mr. Howard heard the shooter state "'fuck' something 'that's what you get bitch!'"

Police Interview of Mr. John Oliver

During the February 1, 2016 police interview of Mr. John Oliver, he reported driving out of the AM-PM gas station with his wife, when a man walked in front of his car, pulled out a gun, and started shooting at a gray Chevy Impala. He stated he observed the man reload his gun, as he walked closer to the car. Mr. Oliver reported that the shooter reloaded his gun with a third clip, walked around the side of a blue car, and continued to fire at the Impala. Mr. Oliver stated that he heard the shooter say, "Is the nigger in there?" as he walked towards the car.

Mr. Oliver stated that following the shooting, the shooter put the empty clips back into his pockets. He stated that the shooter looked at him and his wife, but that he did not point the gun at them.

Police Interview of Ms. Natasha Stevens

Ms. Natasha Stevens stated during the February 1, 2016 police interview that she met Mr. Grott at a marijuana collective, noting that they dated for 8 months prior to breaking up in September 2015. She reported that during their relationship, she did not observe Mr. Grott using any drugs other than marijuana. She indicated that she saw Mr. Grott with a handgun on one occasion, but noted that he was never violent. Ms. Stevens reported that she believes that Mr. Grott has

0113

Forensic Mental Health Report
Re: Robert Deshawn Grott

January 10, 2017
Page 18 of 24 pages

PTSD, but indicated that Mr. Grott himself does not believe he has Posttraumatic Stress Disorder.

Ms. Stevens indicated that Mr. Grott and the victim had a dispute regarding a missing gun, but reported that she could not recall the details of this event. Ms. Stevens described Mr. Grott as a "loner, and didn't have any friends."

Police Interview of Mr. Rashaad Grott

During a police interview of Mr. Rashaad Grott, he described a verbal altercation that his brother and the victim had regarding a gun in August 2015. He stated that his brother had been "yelling at Jay," and that he had to go calm his brother down.

Mr. Rashaad Grott also described an event that occurred on Halloween night of 2015, in which Mr. Robert Grott had an argument with Ms. Jada Thomas. Mr. Rashaad Grott stated that his brother was yelling at Ms. Thomas, saying, "[Y]our brother stole my gun. He needs to come see me." Mr. Rashaad Grott reported that his brother "threatened to beat" her during this argument.

Mr. Rashaad Grott reported that he did not believe that his brother had PTSD. He did indicate that his brother had outbursts of anger.

Police Interview of Mr. Robert Grott

We reviewed the written summary of the police interview of Mr. Robert Grott. In this summary, the police officer indicated that Mr. Grott appeared "professional and courteous." Mr. Grott reportedly largely declined to speak with police without a lawyer present, but did ask a few clarifying questions about his criminal charge.

Discussion of Diminished Capacity

Mr. Grott is charged with one count of Murder First Degree; which is defined in RCW 9A.32.030(1)(1) as follows:

Murder in the first degree.

- (1) A person is guilty of murder in the first degree when:
- (a) With *premeditated intent* [emphasis added] to cause the death of another person, he or she causes the death of such a person or of a third person;

* * * *

Thus, the requisite mental elements that are included in the definition of Murder First Degree are *premeditation* and *intent*. The prosecution must therefore prove that Mr. Grott, with *premeditated intent*, caused the death of Mr. Julian Thomas. The Court has asked us to provide an opinion as to Mr. Grott's *capacity* at the time of the offense, to form the requisite mental elements, that is, *premeditation* and *intent*.

1/17/2017 15475

Forensic Mental Health Report
Re: Robert Deshawn Grott

January 10, 2017
Page 19 of 24 pages

The question of *capacity to form a mental element* requires analysis of:

- The presence of a mental illness
- Analysis of what symptoms were likely present at the time of the offense
- Identification of the mental abilities impaired by the symptoms
- The analysis must address the *probability and degree to which these impairments may have interfered with the ability to form the requisite mental state*

Thus, we will examine the reported events to offer an opinion whether at the time of the offense, Mr. Grott exhibited symptoms of a mental illness, what mental abilities may have been impaired by these symptoms, and the probability and degree to which these impairments may have interfered with Mr. Grott's ability at that time, to *premeditate* and/or to *intend* to do the acts that resulted in the charged offense.

Capacity to Form Intent

We will first examine the reported discovery material and evidence, statements of witnesses, and statements of Mr. Grott, to determine if there were any indications that, at the time of the alleged murder, he exhibited symptoms of a mental illness caused his ability to form *intent* to be impaired.

As has been stated above, Mr. Grott reported that he first began experiencing symptoms of hypervigilance during his military deployment. He noted that his hypervigilance became substantially worse following the alleged October 31, 2015 shooting. He did not report experiencing any other psychological symptoms other than hypervigilance during our evaluation interview.

As reported by Dr. Manley in his September 9, 2016 report, however, Mr. Grott also endorsed having some sleep difficulties, psychological distress when remembering past traumatic events, physiological reactions to traumatic triggers, trauma avoidance, and depressive symptoms. Additionally, he reported having perceptual distortions (i.e., slowed time or brightened colors), which Dr. Manley concluded were likely episodes of derealization.

As such, the question in this case is if there is any evidence that Mr. Grott actually experienced symptoms of a mental illness during the alleged offense and if any symptoms he experienced prevented him from forming *intent*. Since we cannot directly know the mental state of an individual, we must rely on conduct and behavior from which we then draw inferences as to a person's mental state. A measure of one's ability to intend to do or perform an act may be then inferred from whether or not they carried on goal-directed or

Forensic Mental Health Report
Re: Robert Deshawn Grott

January 10, 2017
Page 20 of 24 pages

deliberate behavior to achieve a particular result (as opposed to an accidental carrying on of activities).

On February 1, 2016, Mr. Grott carried on a series of what appeared to be goal-directed and deliberate behaviors, including:

- He packed, on his person, a Glock 19 handgun and three loaded ammunition clips
- He traveled by skateboard, carrying his handgun and three loaded clips, to Fred Meyer
- He went into Fred Meyer to pay the electric bill
- He traveled by skateboard to the Shell gas station
- He purchased swishers from the Shell gas station
- He traveled by skateboard in the direction of a cannabis shop
- He stopped at the AM-PM when he saw Mr. Thomas
- He fired his weapon at Mr. Thomas' car, firing a reported 16 times
- He disengaged the empty 16-round clip
- He loaded a second clip into his gun, reportedly containing 30 rounds
- He fired the 30-round clip of ammunition at the car
- He disengaged the empty 30-round clip
- He loaded a third 16-round clip into his handgun
- He left the AM-PM and traveled in the direction of his house
- He skated to his neighbor's house, after he noticed that there were people following him from the AM-PM
- He entered his neighbor's backyard, which allowed for unseen entry into his house
- He stored his weapons in a bag at his house
- He rolled a blunt, using the swishers he bought from the Shell gas station
- He smoked marijuana, drank alcohol, and watched the television show Empire
- He spoke to his brother
- He left his house with his brother, after being informed by his family it was not safe for him to remain in the house
- He traveled to his family's house with his brother
- He left the state of Washington with his brother, traveling to California, after being informed that it was not safe for him to remain in the area

Although Mr. Grott stated that in the time leading up to the alleged offense he was hypervigilant, there is no indication – in either his self-report or in collateral records – that any hypervigilance he actually experienced was so severe that it precluded his ability to carry out goal-directed and deliberate behaviors⁷.

⁷ Previous research suggests that hypervigilance, in itself, does not impair an individual's ability to form intent (Berger, McNeil, & Binder, *Journal of the Academy of Psychiatry and Law*, 40:509-21, 2012).

For example, he was able to complete all of his planned tasks prior to reaching the AM-PM: paying a bill at Fred Meyer and making a purchase at the Shell station. He was able to shoot accurately at the car that Mr. Thomas was located in, and he reportedly stopped shooting when requested to do so by a bystander. The aforementioned behaviors each require at least some decision-making abilities.

Moreover, there is minimal evidence to suggest that any hypervigilance he actually experienced at the time of the alleged offense was severe. For example, no witness statements reported that he appeared overly observant or cautious when he was leaving the AM-PM, as would be expected in an individual experiencing extreme hypervigilance. Similarly, witnesses reported that he did not appear fearful when he they attempted to detain him using a weapon.

This is somewhat corroborated by Mr. Grott himself, who indicated that he did not notice that individuals were following him for an extended period of time. Likewise, he did not report any hypervigilant type behaviors when he returned home following the charged offense. In fact, he made no statements that reflected any serious concern about his personal safety following the shooting, until a family member told him there were renewed threats against his life. When he left the house, at the suggestion of his family for his own protection, he did not bring a gun.

Although he had reported experiencing some perceptual distortions in the past, he did not report those experiences during our evaluation. It is important to note, however, that even if he actually experienced some perceptual distortions at the time of the charged offense, his descriptions of the alleged offense are not consistent with an individual who was experiencing an episode of derealization⁴⁹.

Similarly, there is no collateral evidence to suggest that at the time of the alleged offense, he was experiencing a derealization episode. None of the witness statements provided any suggestion that Mr. Grott appeared out of touch with reality or in a dissociated state during the February 1, 2016 incident.

This suggests that any psychological symptoms that he may have actually experienced during the alleged offense were not severe enough to impair his ability to form intent. Thus, while his past experiences may have influenced the manner in which he chose to act on February 1, 2016, there is no indication that any severe trauma-related psychological symptoms, or other symptoms of a mental disorder, were present at that time.

⁴⁸ Derealization is a dissociative experience that sometimes occurs in individuals with Posttraumatic Stress Disorder. Individuals in derealization episodes have perceptual distortions that are so severe that an individual feels as if their world is unreal. Past research and Washington State court cases have found that in the cases of severe derealization, a person may be so out of touch with reality that they do not have the ability to form intent (See *State v. Bottrell*, 103 Wn.App. 706 (2000); *Berger et al.*, 2012).

⁴⁹ Individuals who experience derealization episodes commonly describe those experiences as feeling dreamlike, unreal, or not being reality.

In summary, it does not appear that during the period leading up to and including the charged offenses, the level of Mr. Grott's symptomatology impaired in any significant manner, his ability to form the element of *intent*. Whether Mr. Grott actually intended to perform the acts of which he is charged is for the trier of fact to ascertain.

Ability to Premeditate

We next examine whether Mr. Grott, at the time of the alleged murder of Mr. Thomas, had the ability or capacity to premeditate carrying out the acts that resulted in the death of Mr. Thomas.

RCW 9A.32.020(1) states regarding *premeditation*, "As used in this chapter, the premeditation required in order to support a conviction of the crime of murder in the first degree must involve more than a moment in time." *Premeditation* was defined by the Supreme Court in *State v. Hoffman*, 116 Wn2d 51 (1991), as follows:

Premeditation is the deliberate formation of and reflection upon the intent to take a human life and involves the mental process of thinking beforehand, deliberation, reflection, weighing or reasoning for a period of time, however short.

With reference to the discussion above regarding the capacity to form *intent*, there is significant information that supports the conclusion that Mr. Grott, at the time of the events that led to the death of Mr. Thomas, was able to *think beforehand, deliberate, reflect, and weigh and reason for a period of time, however short*.

His conduct at that time, as described above by his own statements and that of witnesses to the events, included a number of acts that required deliberation and thought. He went into Fred Meyer and paid his electric bill, purchased swishers from the Shell gas station, and travelled by skateboard towards the cannabis shop. He stopped at the AM-PM when he saw Mr. Thomas, and fired his handgun 46 times at Mr. Thomas, stopping only to reload clips into his handgun. He performed various other acts after the shooting that further support the conclusion that he had the ability to premeditate at the time of the shooting.

Thus, irrespective of any symptoms of a mental disorder at that time of the alleged offense, it appears that Mr. Grott's ability to form the requisite mental element of *premeditation* had not in any significant manner been impaired. We offer no opinion as to whether Mr. Grott actually premeditated the crime of murder, as that is solely within the purview of the trier of fact.

Assessment for Future Dangerousness

This opinion concerning dangerousness was court-ordered and conducted within the scope of RCW 10.77.060 regarding pre-trial mental health evaluations. An opinion is to be made as to whether the defendant presents a substantial danger to others or presents a substantial

Forensic Mental Health Report

Re: Robert Deshawn Grott

January 10, 2017

Page 23 of 24 pages

likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control of the court or other persons or institutions. An additional opinion is required as to whether the defendant should receive a RCW 71.05 civil commitment evaluation by a DMHP. This opinion is based solely upon the above evaluation under RCW 10.77.060 and 10.77.084. Other reasons may exist to require a civil commitment evaluation, which fall within the scope of other standards outside the purview of this evaluation.

Mr. Grott's criminal conviction history has been previously noted. Current practice in violence risk assessment involves the consideration of static (i.e., historical) and dynamic (i.e., fluctuating, changeable) factors frequently associated in research literature with future violence. The Historical, Clinical, Risk Management - 20, version 3 (HCR-20 v3) is an instrument that organizes such known risk factors, dividing them into three categories: Historical, Clinical, and Risk Management.

Historical risk factors (also known as static factors) are relatively stable elements of the individual's life and are unlikely to change. In Mr. Grott's case, the following historical risk factors, as discussed by the HCR-20 v3, were present: history of violent acts (only with respect to the charged offenses); possible relationship problems; history of substance abuse, and history of problems with traumatic experiences.

Clinical risk factors describe the individual's current mental state and are considered to be more changeable or amenable to treatment. Mr. Grott is not currently presenting any symptoms of major mental illness. He does appear to have limited insight into the impact that his substance use may have had on his overall functioning and mental health.

Finally, risk management factors are those that are likely to influence the individual in the future, and are also considered to be changeable. Mr. Grott does exhibit some indication of ongoing problems with stress and/or coping.

Based upon Mr. Grott's criminal history record, information obtained through clinical and collateral interviews, a review of risk factors, and a review of his reported conduct during the alleged February 1, 2016 offense, it is our professional opinion that he is currently a medium to high risk for reoffending and dangerous behavior.

DMHP Referral

Mr. Grott has denied current thoughts of harm to self or others, and would appear able at the current time to provide independently for his basic needs of health and safety. Therefore, based upon the information contained in this report, a DMHP assessment would not appear required.

This evaluation is complete with the submission of this report. However, if we may be of further service to the Court in this matter, please do not hesitate to contact us.

0118

15475

1/17/2017

0119

Forensic Mental Health Report
Re: Robert Deshawn Grott

January 10, 2017
Page 24 of 24 pages

Electronically Signed and Authenticated via Clinical Document Manager (CDM)

Ray Hendrickson, J.D., Ph.D.

Licensed Psychologist/Supervisor
Center for Forensic Services
Western State Hospital

Clinical Associate Professor
University of Washington School of Medicine
Department of Psychiatry and Behavioral Sciences

Office: 253-761-7621

Fax: 253-512-5452

Email: ray.hendrickson@dshs.wa.gov

Katharine McIntyre, Ph.D.

Forensic Psychology Postdoctoral Fellow
Center for Forensic Services
Western State Hospital

Office: 253-512-5448

Email: katharine.mcintyre@dshs.wa.gov

Maiga Bengtson, M.A.

Psychology Practicum Student
Center for Forensic Services
Western State Hospital

cc: Presiding Judge, Pierce County Superior Court
Jesse Williams, Deputy Prosecuting Attorney
Michael Frans, Defense Counsel
Pierce County DMHP
Pierce County Jail

1/17/2017 1:5475

INMATE

April 26, 2022 - 1:15 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 56193-0
Appellate Court Case Title: Personal Restraint Petition of: Robert Deshawn Grott
Superior Court Case Number: 16-1-00509-0

DOC filing of grott Inmate DOC Number 399611

The following documents have been uploaded:

- 561930_20220426011507D2538688_3555_InmateFiling.pdf {ts '2022-04-26 13:10:40'}

The Original File Name was doc1pabr1108_20220426_121026.pdf

The DOC Facility Name is Stafford Creek Corrections Center.

The Inmate The Inmate/Filer's Last Name is grott.

The Inmate DOC Number is 399611.

The CaseNumber is 561930.

The Comment is 1of1.

The entire original email subject is 12,grott,399611,561930,1of1.

The email contained the following message:

External Email Warning! This email has originated from outside of the Washington State Courts Network. Do not click links or open attachments unless you recognize the sender, are expecting the email, and know the content is safe. If a link sends you to a website where you are asked to validate using your Account and Password, DO NOT DO SO! Instead, report the incident. Reply to: doc1pabr1108 <doc1pABR1108@doc1.wa.gov> Device Name: DOC1pABR1108 Device Model: MX-4071 Location: ABR1 - D-BLDG - ROOM 1302 File Format: PDF MMR(G4) Resolution: 200dpi x 200dpi Attached file is scanned image in PDF format. Use Acrobat(R)Reader(R) or Adobe(R)Reader(R) of Adobe Systems Incorporated to view the document. Adobe(R)Reader(R) can be downloaded from the following URL: Adobe, the Adobe logo, Acrobat, the Adobe PDF logo, and Reader are registered trademarks or trademarks of Adobe Systems Incorporated in the United States and other countries. <https://smex-ctp.trendmicro.com:443/wis/clicktime/v1/query?url=http%3a%2f%2fwww.adobe.com&umid=3ae26807-b555-44da-b5d8-6306fa75f138&auth=c302d29ff7906effa60127fd92782ca6bfab614f-5be5463199df251d170b003f3c326bb26e7c3e47>

The following email addresses also received a copy of this email:

A copy of the uploaded files will be sent to:

- Theodore.Cropley@piercecountywa.gov
- pcpatcecf@piercecountywa.gov
- Liseellnerlaw@comcast.net
- PCpatcecf@piercecountywa.gov

Note: The Filing Id is 20220426011507D2538688